17

D.B. CIVIL SPECIAL APPEAL NO.35/2005
[RAM NIWAS VS. STATE & ANR.]
Date of Order : 12.07.2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICESHRI MAHESH CHANDRA SHARMA

Mr.Bharat Devasi for the appellant.
Mr.L.R.Upadhyaya Dy.G.A. for the respondent.

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This appeal is directed against the judgment passed by the learned Single Judge dismissing the writ petition for declaring the eligibility of the petitioner to contest the Panchayat election which were scheduled to be held in January, 2005 inter alia on the ground that since the petitioner had more than three children but from different wives, therefore, considering his current marital status vis a vis the present wife only the number of children can be counted for the purposes of his eligibility in terms of Section 19 [1] [l] of the Panchayati Raj Act, 1994.

Bereft of anything else the petitioner cannot have his credential to contest the elections declared in advance by the court by determining his eligibility. It is in the domain of the returning officer before whom the nomination papers are presented in terms of schedule of the election. The petition deserved to be dismissed on this ground alone.

Apart from the aforesaid, we do not find any merit in the contention raised by the learned counsel for the petitioner. Under Section 19 of the Act the qualification and disqualification prescribed are personal to the contesting person who has to be a natural born individual and not a juristic person nor he can be a contestant other than as an individual. Any provision made prescribing qualification, restriction or disqualification thereunder had to be read in that light.

Sub-section [l] of Section 19 [l] renders a contestant ineligible for contest the election if he/she has more than two children on the date the Act had come into force that is to say w.e.f. 23.04.1994. A proviso was added to Section 19 for mitigating the rigor of the aforesaid provision to the extent the birth of any additional child between the date of commencement of the Act to 27.11.1995 would not be taken into consideration for the purpose of disqualification. The reason is obvious to make birth of any child in womb as on the date of commencement of the Act, may not result in disqualification of the person. If number of children the person seeking to contest election to become a member of any Panchayati Raj Institution may have after the date 27.11.1995 in addition to child specified in Section 19 [1] [l] or if he has already more than two children before the date i.e. 27.11.95 he becomes disqualified

to contest the election thereafter.

Apparently, disqualification is attached to the person desirous of contesting election and the number of children are taken into account which the person contesting the election whether male or female, has when the elections takes place.

In the present case petitioner had married three times. His first marriage with Sharda Devi took place on 16.05.1987 and out of that wedlock petitioner Ram Niwas had a daughter. Smt. Sharda Devi the first wife died on 11.05.1993. The petitioner thereafter married a second time to one Indra Devi on 13.04.1994 and two sons were borne out of this wedlock. Smt. Indra Devi died on 16.11.1997 and he had total three children when the second child was born out of second marriage borne after 27.11.1995, in terms of Section 19 [1] [l] of the Act petitioner had become ineligible to contest election on birth of third child after 27.11.1995.

After the death of his second wife the petitioner again married and he had no issue with the third wife when the election in question were announced.

The petitioner claims to be eligible to contest the election

by ignoring the three existing children and submits that he is eligibile to contest the election though he has already become ineligible on the birth of third child after 27.11.1995 on the anvil that from existing marriage he had no child. Nor did he had more than two children from two previous marriage through each wife. Therefore, notwithstanding the fact that he had a child born after 27.11.1995 making him father of three children on such birth his existing three children should be ignored for the purpose of considering his eligibility and only the child vis a vis single marriage be considered for the purpose of applicability of Section 19 [1] [l]. For this purpose, he relied on the word used in Explaination to Section 19 “Couple” used in Section, relevant portion of which reads as under:-

> Section 19: Every person registered as a voter in the list of voting of a Panchayati Raj Institution shall be qualified for election as a Panch or as the case may be, a member of such Panchayati Raj Institution unless such person-
>
> [a] xxx
> to
> [k] xxx
>
> [1] has more than two children [and]
>
> [m] xxx
>
> provided that
> [i] xxx
>
> to

[iii] xxx

[iv] the birth during the period from the date of commencement of the Act, hereinafter in this proviso referred to as the date of such commencement, to 27th November, 1995, of an additional child shall not be taken into consideration for the purpose of the disqualification mentioned in Clause [1] and a person having more than two children [excluding the child if any, borne during the period form the date of such commencement to 27th November, 1995] shall not be disqualified under that Clause for so long as the number of children he had on the date of commencement of this Act does not increase.

[v] xxx

Explanation: For the purpose of Clause [i] of Section 19, where the person has only one child from the earlier delivery or deliveries on the date of commencement of this Act and thereafter, any number of children borne out of a single subsequent delivery shall be deemed to be one entity."

Learned Single Judge has not countenanced this interpretation put forward by learned counsel and relies on another decision of learned Single Judge rendered in S.B.Civil Writ Petition No. 1105/1999 Vagha Ram Vs. Civil Judge [Sr. Div.] Jalore decided on 16.11.1999.

Having given our anxious consideration to arguments made by learned counsel for the parties and the provision of statutes prescribing qualification for contesting the election of Panchayati Raj institution by a person and the object with which

the provision has been enacted we are in agreement with the learned Single Judge whose judgment is under appeal.

The contention to the contrary is not well founded the qualification or disqualification of an contesting candidate is always attached to the individual and not cumulatively on an association, like family or otherwise. It is not contended that if a husband is ineligible to be a member of Panchyati Raj Institution wife too becomes disqualified to be member of such institution or vice versa.

Section 19 which provides disqualification for a person, whether male or female, from becoming member of a Panchayti Raj Institution, if she or he has more than two children. It is not further qualified by 'out of same wedlock'. Hence there is no room for or for contending that the limit of two children is with reference to existing marriage and not otherwise. For example if a widow or widower were to contest election, there is no subsisting marriage, of which children could be taken in to account as per contention of the petitioner. Likewise, successive marriage will also result in a person who has become ineligible on account of previous subsisting marriage, becoming eligible once again to contest election. Such an absurd result cannot be attributed to legislative

provision.

The purpose of above provision is clearly to provide a message that those who wants to be in public life and hold elected office must adhere to population control programme which is a pressing requirement of nation. It envisages that those who wants to lead the society in the matter of natural issue like population control, must lead in following that policy also from front.

The Explanation reads as under

> "For the purpose of Clause [i] of Section 19, where the person has only one child from the earlier delivery or deliveries on the date of commencement of this Act and thereafter, any number of children borne out of a single subsequent delivery shall be deemed to be one entity."

Obviously, children by a single delivery of any given wedlock to be considered as one child for the purpose of adding to the existing children is to take cognizance of an abnormal event over which the person has no control. Having more than one child, through one pregnancy in a biological freak and that fortutious circumstances may not be a ground for disqualifying a person who may otherwise does not became disqualified if ordinary a delivery of one child takes place through one pregnancy. It is to take care of this contingency for the limited

purpose of adding new born child to existing children explanation has been enacted to clarify that ordinary rule of one pregnancy one child shall be followed in making addition to existing children for the purpose of giving effect to Section 19 [1] [l]. Reference to work 'Couple' in explanation for a particular contingency cannot be a granted in substantive provision to render it wholly unworkable and defeat its very purpose. The purpose of explanation is to clarify that where a candidate had only one child in existence at the time of commencement of the Act and subsequent thereto number of children are born of single delivery the same shall be deemed to be one child for the purpose of adding to existing child. For example, if a twin is born to the candidate who has already having one child, the total number of children become three but it should be taken two for the purpose of Section 19 [l] and not three by physically counting the number of child her delivery to be one as specified in the Explanation. It does not go beyond clarifying this position. Reading more than that in Explanation is not warranted in the scheme of whole provision.

In view thereof, we do not find any merit in this appeal. The view expressed earlier in the Vaga Ram's case does not appear to be correct.

In view of the above discussion, the appeal fails and is hereby dismissed.

No costs.

(MAHESH CHANDRA SHARMA),J. (RAJESH BALIA)A. C.J.

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